

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann (SBN 229832)
cja@ackermanntilajef.com
315 South Beverly Drive, Suite 504
Beverly Hills, California 90212
Phone: (310) 277-0614
Fax: (310) 277-0635

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Kyle D. Smith (SBN 280489)
ks@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

*Attorneys for Plaintiff, the Putative Class, the
LWDA and the Aggrieved Employees*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MIESHIA MARIE JACKSON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

FASTENAL COMPANY, a Minnesota
Corporation; and Does 1 through 20, inclusive,

Defendants.

Case No. 1:20-cv-00345-JLT-SAB

**JOINT STIPULATION TO MODIFY THE
MAGISTRATE'S FINDINGS AND
RECOMMENDATIONS RECOMMENDING
GRANTING IN PART FINAL APPROVAL
OF CLASS ACTION SETTLEMENT NUNC
PRO TUNC AND PLAINTIFF'S
AGREEMENT TO WITHDRAW APPEAL
TO THE DISTRICT COURT JUDGE IF
THE MAGISTRATE SIGNS THIS
COMPROMISE STIPULATION AND
ORDER**

Complaint Filed: January 21, 2020
Trial Date: None
Magistrate Judge: Hon. Stanley A. Boone
Courtroom 9, Fresno

1 EVAN R. MOSES, CA Bar No. 198099
evan.moses@ogletree.com
2 MELIS ATALAY, CA Bar No. 301373
melis.atalay@ogletree.com
3 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213-239-9800
Facsimile: 213-239-9045

6 Attorneys for Defendant
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Mieshia Marie Jackson (“Plaintiff”) and Defendant Fastenal Company (“Defendant”) (collectively, “the Parties”), by and through their respective counsel, hereby stipulate that Class Counsel’s Fee Award be reduced from the originally requested 25% of the Gross Settlement Amount to 20% of the Gross Settlement Amount, subject to the Court’s Order granting the reduced fee award and Plaintiff’s Motion for Final Approval of the Class Action Settlement (Docket No. 27).

WHEREAS, before the end of the class notice period related to the settlement of this case on a class basis, on May 31, 2022, Plaintiff timely filed Plaintiff’s Motion for Attorneys’ Fees and Costs (the “Fees Motion”) [Docket No. 26];

WHEREAS, on September 9, 2022, Plaintiff filed her Motion for Final Approval of Class Action Settlement (the “Final Approval Motion”) [Docket No. 27];

WHEREAS, Plaintiff’s Fees Motion included a request for attorneys’ fees in the amount of 25% of the Gross Settlement Amount of \$2,400,000.00 (i.e., \$600,000), which Plaintiff contends is a request consistent with the Ninth Circuit’s benchmark for attorneys’ fees awards. *See In re Blutooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Rodriguez v. M.J. Brothers, Inc.*, No. 1:18-cv-00252-SAB, 2019 WL 3943856 (E.D. Cal. Aug. 21, 2019);

WHEREAS, on December 3, 2021, in the Court’s Findings and Recommendations Recommending Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the Court found the “preliminarily proposed attorneys’ fees and expenses award is reasonable” [Docket No. 19];

WHEREAS, on October 13, 2022, the Court held a hearing on Plaintiff’s Fees Motion and Final Approval Motion;

WHEREAS, October 19, 2022, the Honorable United States Magistrate Judge Stanley A. Boon issued his Findings and Recommendations Recommending Granting in Part Final Approval of Class Action Settlement (the “Findings and Recommendations”) [Docket No. 29];

WHEREAS, the Findings and Recommendations recommended that the class action settlement be finally approved but that Class Counsel’s request for attorneys’ fees be substantially reduced from the benchmark requested fees to \$307,385.00, representing a fee award of

approximately 12.84% of the \$2,400,000.00 Gross Settlement Amount;

WHEREAS, on November 1, 2022, Class Counsel timely filed their Objections to Magistrate’s Judge’s Findings and Recommendations (the “Objections”) [Docket No. 33];

WHEREAS, in the Objections, Class Counsel specifically objected to the Magistrate’s attorneys’ fee award reduction and stated a number of reasons why the Magistrate may have erred in recommending that the requested attorneys’ fees, sought at the 9th circuit’s benchmark rate, and to which no class member had objected, be cut roughly in half;

WHEREAS, the Objections did not pertain to matters addressed in the Magistrate Judge’s Findings and Recommendations, other than the fee award reduction;

WHEREAS, the Objections have been pending for more than six months and counsel for Plaintiff and the Settlement Class is concerned that payments to Settlement Class Members have already been delayed for a lengthy period of time and that Counsel’s objections to fees remain the sole impediment to the Settlement payments proceeding;

WHEREAS, in the hopes of expecting resolution of the fees issue, Class Counsel is willing to accept a reduction of their attorneys’ fee award request from 25% of the Gross Settlement Amount to 20% of the Gross Settlement Amount (i.e., \$480,000.00) and, if the 20% request would be entertained and accepted by the Magistrate, Class Counsel would be willing to drop their appeal to the District Court Judge;

WHEREAS, the difference between the attorneys’ fee award original request of (\$600,000) and the updated request (\$480,000) (i.e., difference \$120,000) will be reapportioned to the net settlement amount for distribution to the settlement class members;

WHEREAS, this proposed attorneys’ fee award modification to 20%, which is lower than the original settlement amount of 25% of the common fund obtained, but higher than the Magistrate’s recommendation at 12.84%, is based on the arguments raised in Plaintiff’s Objections;

WHEREAS, in exchange for the Magistrate accepting the Parties’ agreement to modify the attorneys’ fee award to 20% of the Gross Settlement Amount, and the Magistrate signing the accompanying Order consistent with that compromise, Plaintiff will withdraw her Objections to the District Court Judge, which have been pending since November 1, 2022;

1 **WHEREAS**, pursuant to the Parties' agreement, Plaintiff may not revoke the settlement
2 agreement if the requested attorneys' fees award is reduced or not granted;

3 **WHEREAS**, counsel for Defendant has no objection to this Stipulation and Order being
4 entered;

5 **THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, subject to the
6 Magistrate's approval, the Parties hereby stipulate and agree that Class Counsel is applying for a
7 reduced attorneys' fee request of 20% of the Gross Settlement Amount in exchange for the
8 Magistrate signing the accompanying Order modifying the Finding and Recommendations to be
9 consistent with the fee amount set forth herein and otherwise recommending approval of Plaintiff's
10 Motion for Final Approval of the Class Action Settlement (Docket No. 27), and Plaintiff then
11 agreeing to withdraw her pending Objections.

12 **IT IS SO STIPULATED.**

13
14 DATED: May 11, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

15
16 By: /s/Melis Atalay
Evan R. Moses
Melis Atalay
17 Attorneys for Defendant

18
19 DATED: May 11, 2023

ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.

20
21 By: /s/Craig Ackermann
Craig Ackermann
Jonathan Melmed
22 Attorneys for Plaintiff
23
24
25
26
27
28